In the High Court of Judicature at Madras

Dated: 22/06/2004

CORAM

The Hon'ble Mr.Justice P.D. DINAKARAN

Writ Petition No.34395 of 2002

E.N.Kandasamy, Proprietor,
Jayanth Traders,
Irugalur Post, Sankari Taluk,
Salem District-637103. .. Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary,
Industries Department,
Fort St. George,
Chennai-9.

2. The Commissioner of Geology
and Mining,
Guindy, Chennai-32.

3. The District Collector,
Salem District,
Salem.

4. Sri Sumathi Minerals,
rep. by its Managing Partner,
72-A, Anbu Nagar,
Manakkadu,
Salem District.

5. Kandayiammal
6. Chenimalai
7. Natesan
8. Palanisamy .. Respondents

..R4 & R5 to 8 impleaded as per order
dt.14.10.2003 made in WPMP.Nos.
57553/2002 & 22285/2003 respectively.

Prayer:- Petition filed under Article 226 of the Constitution of India
praying for issue of writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.G.Arul Murugan

^For Respondents : Mr.P.Gunaraj,
Spl. Govt. Pleader-R1 to 3
No appearance-R4
Mr.C.Prakasam-R5 to 8.

:O R D E R

Aggrieved by the proceedings dated 30.07.2002 passed by the second respondent rejecting the application filed by the petitioner for grant of mining lease to quarry major mineral quartz and feldspar over an extent of 4.76.0 hectares in Survey Nos.117/2D, 120/2B, 171, 121/1A, 118 and 121/1B of Koothanatham Village, Tiruchengodu Taluk, Salem District, by exercising the power conferred under Rule 26(1) of the Mineral concession rules, 1960, (hereinafter referred to as 'the Rules'), the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the second respondent relating to the order in Rc.No.11 050/MM3/92 dated 30.07.2002, quash the same and consequently to direct respondents 1 to 3 to grant mining lease in favour of the petitioner for the lands in Survey Nos.117/2D, 120/2B, 171, 121/1A, 118/2 and 121/1B of Koothanatham Village, Tiruchengodu Taluk, Salem District.

2. In the impugned proceedings dated 30.7.2002, the second respondent rejected the application filed by the petitioner for mining lease referred to above, of course, after issuing notice to the petitioner before passing the impugned order as contemplated under Rule 26(1) of the Rules, finding that the petitioner had given a false affidavit/ written statement that he had obtained the consent of the pattadarsrespondents 5 to 8 and also observing that the concerned pattadarsrespondents 5 to 8 had already entered into an agreement permitting the fourth respondent to apply for the mining lease for about 21 years.

3. What all Mr.G.Arul Murugan learned counsel for the petitioner argues is that the pattadars viz., respondents 5 to 8 had already given their consent on 6.4.1992 in favour of the petitioner, but subsequently withdrawn the same on 8.5.2002 and therefore, the said consent ought to have been considered by the second respondent as a strict compliance of Rule 22(3)(h) of the said Rules.

4. Mr.C.Prakasam, learned counsel appearing for respondents 5 to 8pattadars submits that the affidavit/written statement said to have been made by the pattadars-respondents 5 to 8 as relied on by the petitioner is forged one and therefore, the petitioner is not entitled to the relief sought for, for non compliance of Rule 22(3)(h) of the Rules. In any event, since the pattadars-respondents 5 to 8 had already given their consent in favour of the fourth respondent to apply for the mining lease in their respective lands, they cannot be compelled under Article 226 of the Constitution of India to give any consent in favour of the petitioner.

5.1. The issues that arise for my consideration in this writ petition are;

(i) whether the impugned order of rejection is in
compliance of Rule 26(1) of the Rules? and
(ii) whether the petitioner satisfies the requirements for the grant
of mining lease?

5.2.1. Issue No.1:- Whether the impugned order of rejection is in
strict compliance of Rule 26(1) of the Rules?

5.2.2. Rule 26(1) of the Rules is apt to be referred here;
"Rule 26. Refusal of application for grant and renewal of mining
lease:- (1) The State Government may, after giving an opportunity of being
heard and for reasons to be recorded in writing and communicated to the
applicant, refuse to grant or renew a mining lease over the whole or part of
the area applied for."

5.2.3. It is not in dispute that the petitioner was given an
opportunity of being heard, but as evident from the impugned proceedings dated
30.07.2002 he could not appear for the enquiry before the second respondent
even though the matter was adjourned once. That part, the petitioner had not
given any medical certificate to show his bona fide that he was sick. Hence,
it is observed in the impugned order that the petitioner failed to avail the
opportunity provided to him in strict compliance of Rule 26(1) of the Rules
referred to above. Therefore, I am of the considered opinion that there is no
violation to Rule 26(1) of the Rules in passing the impugned order.

5.3.1. Issue No.2:- Whether the petitioner satisfies the requirements
for the grant of mining lease?

5.3.2. Rule 22(3)(h) of the Rules reads as follows:-
Rule 22: Applications for grant of mining leases:- Rule 22(3)(i)
Every application for the grant of renewal of a mining lease shall be
accompanied by:-
(a) ....
(h) a statement in writing that the applicant has, where the land is
not owned by him, obtained surface rights over the area or has obtained
consent or the owner for starting mining operations:

5.3.3. A reading of Rule 22(3)(h) of the Rules makes it clear that
the requirement to furnish the consent statement in writing giving consent by
the land owners for starting mining operation is a condition precedent for
considering the application.

5.3.4. In the instant case, even though the learned counsel for the
petitioner places reliance on the consent alleged to have been given by the
pattadars, the pattadars themselves submit that the said letter is forged and
they never gave consent to the petitioner, but on the other hand, they gave
consent to the fourth respondent. As the pattadars had not given any consent
to the petitioner, it is improper for this Court to go into the question as to
whether the consent alleged to have been given by the pattadars-respondents 5

to 8 as relied on by the petitioner was forged or otherwise, by exercising the power conferred under Article 226 of the Constitution of India. In any event, since the pattadars-respondents 5 to 8 have come forward to say that they never gave consent to the petitioner and on the other hand, they gave consent to the fourth respondent, this Court has no option except to dismiss the writ petition, confirming the order of the second respondent dated 30.7.2002, as the application made by the petitioner is not in compliance of Rule 22(3)(h) of the Rules.

6. Issue No.2 is answered in negative.
Hence, the writ petition fails and the same is dismissed. No costs.

ATR

To,

1. The Secretary,
Industries Department,
State of Tamil Nadu,
Fort St. George,
Chennai-9.

2. The Commissioner of Geology
and Mining,
Guindy, Chennai-32.

3. The District Collector,
Salem District,
Salem.